

REMARKS

Claims 1-22 are pending in the application and stand rejected.

Rejection under 35 U.S.C §101

Claims 16-18, 20 and 21 stand rejected under 35 U.S.C. 101 as reciting a use without setting forth any steps involved in the process. Without agreeing with the Examiner, Applicant has amended the claims and submits that this rejection is now moot and respectfully requests the Examiner to withdraw it.

Rejection under 35 U.S.C §102 and §103

Claims 1-22 stand rejected under 35 U.S.C. 102(b) as being anticipated by, or in the alternative under 35 U.S.C. 103(a) as being obvious in view of, U.S. Patent No. 3,914,438 to Holt. Applicant respectfully disagrees but, solely in the interest of speeding the passage of this application to allowance, has amended claim 1 to now include the limitations originally recited in claims 5 and 9. Applicant respectfully submits that Holt does not anticipate nor render obvious a method as claimed for the preparation of a biological fertilizer comprising subjecting whey to a first fermentation step, subjecting the fermented whey to a filtration step, and the addition of a cellulose-rich carrier material to the filtered fermented whey.

As the Examiner will appreciate, Holt et al. disclose a process of making a nutrient composition that comprises cultured whey 12 sprayed on mixing dry ingredients 10. The dry ingredients 10 include the entire composition of a trace mineral mix that is comprised of the source of trace minerals, a carrier clay, anionic dispersing agents, wetting agents, surfactant agents, and portions of primary and secondary fertilizers (see column 7, lines 47-53). The components of the trace element mineral mix are disclosed at column 10, lines 32-50. As disclosed at column 5, lines 42-48, the clay merely functions as a convenient carrier for the trace mineral source and is typically an inorganic substance such as kalonites, attapulgite, montmarilainit and bentonite.

In contrast, the carrier material according to the present invention is a cellulose-rich carrier material that performs three functions in the final composition, namely:

- 1) provide a possible additional carbon source;
 - 2) allows for improved transport and handling characteristics of the biological fertilizer;
- and
- 3) prevents washing out of the fermented whey of the application (see specification at page 4, third paragraph).

The fermented whey in combination with the specific type of carrier material provides a fertilizer that supplies nutrients to soil in a sustained manner, i.e. a relatively constant release of nutrients during a relatively long period that is believed to be due to postfermentation of the fertilizer by soil microorganisms after application. Thus, the carrier material of the present invention is an essential component of the fertilizer compound, whereas in the fertilizer of Holt the carrier only performs the function of a carrier as such and nothing more. For this reason, Applicant is compelled to disagree with the Examiner's contention that the specific application of a cellulose-rich carrier material as per the presently claimed invention is anticipated by Holt or that can be substituted by the carrier materials as disclosed by Holt.

Applicant further notes that the fermented whey in the present invention is filtrated to separate the microbial biomass, as recited in amended claim 1. Holt does not disclose such filtration step, but rather clearly teaches that the cultured whey ingredient 12 is sprayed on the mixing dry ingredients 10: "At first an appearance of wet agglomerates is obtained, however, after continuing mixing all moisture is absorbed into the dry ingredients and the product obtains a dry freeflowing appearance without a substantial portion of large agglomerates." (Holt, col. 7 ll. 57-61) Thus, a skilled person looking to produce a dry fertilizer of whey according to Holt would not consider using a filtration step in view of Holt's unambiguous teaching that the mixing step is sufficient by itself.

In view of the foregoing, Applicant respectfully submits that claim 1 as presently amended is novel and nonobvious over Holt and requests the Examiner to kindly reconsider and pass this claim to issue. Claims 2-4, 6-8, and 10-22 depend from claim 1 and Applicant therefore

submits that these claims are also allowable at least in view of the dependency on claim 1. Should the Examiner disagree, Applicant respectfully requests him to clearly and specifically point out where Holt discloses the novel features discussed above, in accordance with the requirements of 37 C.F.R. 1.104(c)2:

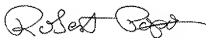
"In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. When a reference is complex or shows or describes inventions other than that claimed by Applicant, **the particular part relied on must be designated as nearly as practicable**. The pertinence, if not apparent, must be clearly explained and each rejected claim specified" (emphasis added).

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In view of the above, Applicant submits that the application is now in condition for allowance and respectfully urges the Examiner to pass this case to issue.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136(a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

Respectfully submitted,



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